

EXHIBIT 12

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SUSANNA MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

XOOM ENERGY, LLC and XOOM ENERGY
NEW YORK, LLC,

Defendants.

No. 18 Civ. 2949 (ARR) (JAM)

**DECLARATION OF JASON LOEHDE IN SUPPORT OF
DEFENDANTS' MOTION TO DECERTIFY THE CLASS**

I, Jason Loehde, under penalty of perjury, declare as follows:

1. I am over the age of twenty-one (21) and am fully competent to make this declaration. The statements contained herein are true and correct and based on my personal knowledge.

2. I make this declaration in support of XOOM's Motion to Decertify the Class.

3. I was employed by XOOM beginning in 2011 and through its acquisition by NRG Energy, in June 2018, as XOOM's Director of Pricing and Structure and later as Senior Director. I am now an employee of NRG Energy and serve as its Director, Market Analysis & Pricing. As XOOM's (Senior) Director of Pricing and Structure, I was responsible for developing pricing models and pricing for all XOOM products across the various markets XOOM serves.

4. Based on my duties in my role as XOOM's (Senior) Director of Pricing and Structure and now NRG's Director, Market Analysis & Pricing, I have personal knowledge of the facts set forth herein. I have access to XOOM's records concerning pricing throughout the Class

Period, which I understand to be from January 1, 2013 through the present. I am familiar with the business documents and records maintained by XOOM in the ordinary course of business. I provide certification as to the authenticity of such records, including those attached as Exhibits to this declaration. The records attached as Exhibits B-1 through B-55 to my declaration are made and kept by XOOM in the regular course of its business.

A. XOOM's Rate-Setting Process

5. XOOM's rate-setting process involves various groups within XOOM (and now NRG) meeting each month to conduct "rate-setting meetings" to set rates for a variety of fixed-rate and variable-rate products. Those rates were set after careful analysis, consideration, and discussion of XOOM's supply costs. Supply costs are always the starting point for every rate-setting decision and are the most important factor when XOOM is determining each rate. At those meetings, rates could be set for up to 20 markets and 1,000 different products, although not every product or market was covered at every meeting.

6. To provide relevant information in a way that would apply to all the products that could be covered at a single meeting, XOOM's pricing team creates "rate-setting workbooks" each month to aggregate data for XOOM's estimated supply costs generated by pricing models pulling from information stored in XOOM's (and now NRG's) databases. There was a different model for each utility market, and the results of those models were aggregated in the rate-setting workbook. The models were not directly included in the rate-setting workbooks for New York because the rate-setting workbooks otherwise would have been too large and unwieldy.

7. The monthly rate-setting workbooks contain information about dozens of (or more) different fixed, variable, and introductory rates for a variety of products. For each product type and rate, the workbooks list data about estimated supply costs as "Cost Components" like commodity charges and ancillary fees, with a summation of those estimated costs listed as the

“Total Cost.” But the rate-setting workbooks do not separately identify cost components that are only relevant to specific products. For example, the “[p]rior period adjustments” referenced in the 2013 Contract’s definition of supply costs do not apply to fixed-rate products (since they are fixed). And for variable-rate products like Ms. Mirkin’s, actual costs and prior period adjustments typically were captured through the settlement and budgeting processes and not explicitly delineated within the rate-setting workbooks.

8. The consideration of XOOM’s actual costs from prior periods informed every rate-setting decision XOOM made on a going-forward basis. Those actual costs were communicated to me through various budgetary documents and emails (which I discuss in more detail in Section B, below), and then implemented by the pricing team when setting all upcoming rates. The cost of delivering energy to the customer—in the form of both estimated supply costs and actual supply costs—formed the foundation and the largest component of XOOM’s variable-rate pricing.

9. I understand that the Court has certified a class that encompasses all variable products sold to residential and small commercial customers in New York during the relevant time. There are forty-four (44) different variable products in New York for which the pricing team is responsible for setting rates and that therefore are included in the class. For the electricity commodity, XOOM’s products are clean and standard, residential and commercial, for each of New York’s seven utility zones (that is, 28 electricity rates). For the natural gas commodity, XOOM’s products are residential and commercial for each of the eight utility zones in New York (that is, 16 gas rates).

10. The costs that XOOM considers in determining the rates for each of those 44 products are not uniform. Rather, they differed by commodity, product, month, and utility zone.

11. XOOM's supply costs for electricity and gas are materially different. The supply cost components for electricity include load shaping, capacity costs, ancillary services, and renewable energy credits, and the electricity market is subject to significant volatility. Natural gas supply cost components, on the other hand, include not only the gas itself, but also pipeline transportation charges, gas storage costs, and balancing costs. Gas markets provide XOOM (and all other suppliers) with greater protection from price shocks than do the electricity markets in New York because the utilities release a lot of long-range transport. This means, for example, that you can buy upstream gas that gets delivered to New York City—an option that is not available for electricity products.

12. The supply costs are also different between standard electricity and clean electricity. This is because XOOM's clean products required XOOM to purchase renewable energy credits ("RECs") to offset usage of standard electricity. It is the purchase of the RECs that makes an energy product "clean." Thus, as the rate-setting worksheets show, the costs for both residential and commercial clean electricity were higher than those for standard electricity. Eventually, XOOM committed to including some renewable energy offsets in even its standard electricity offerings in New York, but the clean products continue to include additional offsets over what is in XOOM's standard electricity products.

13. Supply costs (both actual and estimated) always are seasonal—changing with the weather. For example, in a June 2016 Winter Basis Hedge Approval Request, a copy of which is annexed hereto as Exhibit B-1 (XOOM_MIRKIN_069947), [REDACTED]

[REDACTED]

[REDACTED] Like many other variables, costs attributable to weather can be thoroughly captured and analyzed only after XOOM's rates are set.

14. Supply costs also change significantly by zone. For example, in New York's Zone A, hydropower from Canada makes electricity less expensive. New York's Zone J, on the other hand, where New York City falls, is one of the most volatile and expensive gas markets in the country where most electricity generation runs on natural gas. Anytime there is a gas shortage, the prices there rocket up.

B. Supply Costs and Prior Period Adjustments

15. As discussed, XOOM (like all other energy suppliers) can base their rates only on the estimated supply costs for the upcoming month and actual costs from prior months as they are learned. The actual supply costs for any given product necessarily varied from XOOM's estimated supply costs. This is because there are always unforeseen conditions that cannot be known until after variable rates are set for the month. The process of recording and analyzing actual supply costs (also referred to as actual COGS) typically takes at least 30 days. Some actual costs are not known for months after a given rate has been set.

16. Actual supply costs not captured in the rate-setting worksheets also arose from unforeseen supply chain issues, such as global events that affected oil prices, or even human error (such as delayed input of accounts payable information).

17. There were numerous occasions when, even when actual supply costs exceeded estimated supply costs, XOOM chose not to pass those additional costs on to the customer. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. XOOM tracks, analyzes, and considers actual supply costs, including prior period adjustments and balancing costs, as part of the rate-setting process. This is reflected in hundreds

of documents that I understand were produced in this litigation, including at least one document showing variances between actual and estimated supply costs for all but three months between November 1, 2012 and January 1, 2020:¹

XOOM_MIRKIN_034888	XOOM_MIRKIN_016953	XOOM_MIRKIN_023869	XOOM_MIRKIN_027882
XOOM_MIRKIN_034923	XOOM_MIRKIN_067107	XOOM_MIRKIN_070408	XOOM_MIRKIN_027914
XOOM_MIRKIN_035225	XOOM_MIRKIN_006863	XOOM_MIRKIN_070412	XOOM_MIRKIN_027916
XOOM_MIRKIN_035309	XOOM_MIRKIN_006929	XOOM_MIRKIN_070499	XOOM_MIRKIN_045100
XOOM_MIRKIN_035378	XOOM_MIRKIN_017542	XOOM_MIRKIN_070501	XOOM_MIRKIN_045314
XOOM_MIRKIN_035416	XOOM_MIRKIN_017587	XOOM_MIRKIN_042479	XOOM_MIRKIN_045315
XOOM_MIRKIN_009519	XOOM_MIRKIN_007284	XOOM_MIRKIN_042641	XOOM_MIRKIN_045489
XOOM_MIRKIN_009520	XOOM_MIRKIN_017831	XOOM_MIRKIN_070562	XOOM_MIRKIN_045490
XOOM_MIRKIN_035450	XOOM_MIRKIN_062626	XOOM_MIRKIN_024661	XOOM_MIRKIN_045641
XOOM_MIRKIN_035461	XOOM_MIRKIN_018258	XOOM_MIRKIN_024662	XOOM_MIRKIN_028642
XOOM_MIRKIN_009601	XOOM_MIRKIN_018562	XOOM_MIRKIN_070633	XOOM_MIRKIN_045685
XOOM_MIRKIN_035541	XOOM_MIRKIN_018564	XOOM_MIRKIN_025037	XOOM_MIRKIN_045918
XOOM_MIRKIN_035690	XOOM_MIRKIN_068053	XOOM_MIRKIN_070675	XOOM_MIRKIN_046067
XOOM_MIRKIN_009871	XOOM_MIRKIN_068348	XOOM_MIRKIN_025345	XOOM_MIRKIN_046416
XOOM_MIRKIN_009918	XOOM_MIRKIN_068802	XOOM_MIRKIN_025346	XOOM_MIRKIN_046667
XOOM_MIRKIN_009947	XOOM_MIRKIN_068846	XOOM_MIRKIN_070739	XOOM_MIRKIN_046732
XOOM_MIRKIN_005249	XOOM_MIRKIN_068921	XOOM_MIRKIN_043093	XOOM_MIRKIN_047277
XOOM_MIRKIN_010072	XOOM_MIRKIN_069042	XOOM_MIRKIN_043094	XOOM_MIRKIN_047278
XOOM_MIRKIN_063969	XOOM_MIRKIN_037935	XOOM_MIRKIN_025737	XOOM_MIRKIN_029940
XOOM_MIRKIN_064019	XOOM_MIRKIN_020863	XOOM_MIRKIN_026051	XOOM_MIRKIN_047713
XOOM_MIRKIN_064177	XOOM_MIRKIN_020864	XOOM_MIRKIN_026052	XOOM_MIRKIN_047796
XOOM_MIRKIN_010643	XOOM_MIRKIN_020870	XOOM_MIRKIN_070813	XOOM_MIRKIN_048235
XOOM_MIRKIN_036284	XOOM_MIRKIN_069304	XOOM_MIRKIN_026402	XOOM_MIRKIN_048243
XOOM_MIRKIN_064980	XOOM_MIRKIN_038935	XOOM_MIRKIN_026403	XOOM_MIRKIN_030413

¹ I understand that the current production ends at January 1, 2020 by agreement of the parties. Similar documents exist for the remainder of the class period.

XOOM_MIRKIN_065139	XOOM_MIRKIN_069479	XOOM_MIRKIN_043435	XOOM_MIRKIN_048413
XOOM_MIRKIN_065239	XOOM_MIRKIN_069632	XOOM_MIRKIN_026973	XOOM_MIRKIN_048642
XOOM_MIRKIN_036577	XOOM_MIRKIN_069707	XOOM_MIRKIN_070944	XOOM_MIRKIN_030750
XOOM_MIRKIN_036601	XOOM_MIRKIN_069779	XOOM_MIRKIN_043775	XOOM_MIRKIN_030934
XOOM_MIRKIN_012432	XOOM_MIRKIN_069870	XOOM_MIRKIN_043776	XOOM_MIRKIN_031164
XOOM_MIRKIN_065722	XOOM_MIRKIN_069947	XOOM_MIRKIN_043989	XOOM_MIRKIN_031349
XOOM_MIRKIN_013210	XOOM_MIRKIN_070005	XOOM_MIRKIN_044107	XOOM_MIRKIN_031771
XOOM_MIRKIN_013406	XOOM_MIRKIN_070027	XOOM_MIRKIN_044108	XOOM_MIRKIN_031842
XOOM_MIRKIN_014346	XOOM_MIRKIN_009065	XOOM_MIRKIN_044118	XOOM_MIRKIN_072094
XOOM_MIRKIN_036931	XOOM_MIRKIN_070120	XOOM_MIRKIN_044121	XOOM_MIRKIN_032234
XOOM_MIRKIN_015208	XOOM_MIRKIN_070203	XOOM_MIRKIN_044172	XOOM_MIRKIN_032409
XOOM_MIRKIN_015656	XOOM_MIRKIN_070208	XOOM_MIRKIN_044505	XOOM_MIRKIN_032475
XOOM_MIRKIN_015720	XOOM_MIRKIN_070297	XOOM_MIRKIN_044506	XOOM_MIRKIN_032533
XOOM_MIRKIN_016187	XOOM_MIRKIN_042001	XOOM_MIRKIN_044516	XOOM_MIRKIN_032603
XOOM_MIRKIN_066858	XOOM_MIRKIN_070359	XOOM_MIRKIN_044609	XOOM_MIRKIN_032651
XOOM_MIRKIN_037103	XOOM_MIRKIN_023868	XOOM_MIRKIN_027880	XOOM_MIRKIN_032719

19. For example, in a February 2013 email with attachment annexed hereto as Exhibit B-2 (XOOM_MIRKIN_009519, XOOM_MIRKIN_009520), in my role as Director of Pricing and Structure, I commented on the January Gross Margin Analysis, explaining why it showed higher than anticipated COGS for power. This variance between estimated and actual supply costs would have been a consideration when setting rates for the upcoming months.

20. In December 2014, XOOM discussed revamping the system by which it forecasts gas prices. [REDACTED]

[REDACTED] A copy of that email is annexed hereto as Exhibit B-3 (XOOM_MIRKIN_006863). The email shows that XOOM actively and regularly tracks prior

period adjustments, often called “PPAs,” to ensure that the rates we set are in line with costs—both actual and estimated.

21. In May 2015, XOOM’s Dominique Broadnax, Power Settlements Manager noted

[REDACTED]

[REDACTED] A copy of that email and attachment is annexed hereto as Exhibit B-4 (XOOM_MIRKIN_018562, XOOM_MIRKIN_018564). This variance between estimated and actual supply costs would have been a consideration when setting rates for the upcoming months.

22. Similarly, in a November 2015 email, Ms. Broadnax [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] A copy of that email and attachment, including the XOOM Risk Management & Power Settlements chart showing a negative variance in NYISO, are annexed hereto as Exhibit B-5 (XOOM_MIRKIN_020863, XOOM_MIRKIN_020870). This variance between estimated and actual supply costs would have been a consideration when setting rates for the upcoming months.

23. In July 2017, at my request, Ms. Broadnax sent me what I call the “striped sheets” for June of that year, which break down certain cost information by XOOM region. A copy of that email and the attachment showing New York variances is annexed hereto as Exhibit B-6 (XOOM_MIRKIN_043433, XOOM_MIRKIN_043435). These variances between estimated and actual supply costs would have been considered when setting rates for the upcoming months.

24. I received similar striped sheets showing actual costs exceeding estimates in New York countless time over the years, all of which would have been considered when setting rates for the upcoming months, including in the following emails:

- a February 2018 email with attachment, annexed as Exhibit B-7 (XOOM_MIRKIN_045684, XOOM_MIRKIN_045685);
- a June 2018 email with attachment, annexed hereto as Exhibit B-8 (XOOM_MIRKIN_029938; XOOM_MIRKIN_029940);
- a July 2018 email with attachment, annexed hereto as Exhibit B-9 (XOOM_MIRKIN_047712, XOOM_MIRKIN_047713);
- an August 2018 email with attachment, annexed hereto as Exhibit B-10 (XOOM_MIRKIN_048234, XOOM_MIRKIN_048235);
- an October 2018 email with attachment, annexed hereto as Exhibit B-11 (XOOM_MIRKIN_048634, XOOM_MIRKIN_048642);
- a Xoom Risk Management & Power Settlements document for October 2018, annexed hereto as Exhibit B-12 (XOOM_MIRKIN_030750);
- a November 2018 email with attachment, annexed hereto as Exhibit B-13 (XOOM_MIRKIN_030933, XOOM_MIRKIN_030934);
- a February 2019 email with attachment, annexed hereto as Exhibit B-14 (XOOM_MIRKIN_031768, XOOM_MIRKIN_031771);
- a Xoom Risk Management & Power Settlements document for June 2019, annexed here to as Exhibit B-15 (XOOM_MIRKIN_032234);
- a September 2019 email with attachment, annexed hereto as Exhibit B-16 (XOOM_MIRKIN_032474, XOOM_MIRKIN_032475);
- a Xoom Risk Management & Power Settlements document for September 2019, annexed hereto as Exhibit B-17 (XOOM_MIRKIN_032533);
- a Xoom Risk Management & Power Settlements document for October 2019, annexed hereto as Exhibit B-18 (XOOM_MIRKIN_032603),
- a December 2019 email with attachment, annexed hereto as Exhibit B-19 (XOOM_MIRKIN_032650, XOOM_MIRKIN_032651), and
- a January 2020 email with attachment, annexed hereto as Exhibit B-20 (XOOM_MIRKIN_032715, XOOM_MIRKIN_032719).

25. Actual COGS that exceed the estimated COGS are a common occurrence, and they are reported, analyzed, and considered by XOOM. Any variances between estimated and actual supply costs would have been a consideration when setting rates for the upcoming months. Additional examples of XOOM's analysis and consideration of documents reflecting such actual costs that I received include:

- a December 2016 email with attachment, annexed hereto as Exhibit B-21 (XOOM_MIRKIN_023868, XOOM_MIRKIN_023869)
- a January 2017 email with attachment, annexed here to as Exhibit B-22 (XOOM_MIRKIN_042478, XOOM_MIRKIN_042479);
- a February 2017 email with attachment, annexed hereto as Exhibit B-23 (XOOM_MIRKIN_024661, XOOM_MIRKIN_024662), noting "COGS" that "resulted in . . . variance from our initial COGS estimate";
- an April 2017 email with attachment, annexed hereto as Exhibit B-24 (XOOM_MIRKIN_025345, XOOM_MIRKIN_025346);
- a document dated May 2017 showing April 2017 numbers for power and gas, annexed hereto as Exhibit B-25 (XOOM_MIRKIN_043094);
- a June 2017 email with attachment, annexed hereto as Exhibit B-26 (XOOM_MIRKIN_026051; XOOM_MIRKIN_026052);
- a July 2017 email with attachment, annexed hereto as Exhibit B-27 (XOOM_MIRKIN_026402, XOOM_MIRKIN_026403);
- an August 2017 email containing a July 2017 Final Margin Statement showing excess costs in New York, annexed hereto as Exhibit B-28 (XOOM_MIRKIN_026971; XOOM_MIRKIN_026973);
- a document dated October 2017 showing September 2017 numbers for power and gas, annexed hereto as Exhibit B-29 (XOOM_MIRKIN_044108);
- another October 2017 email with attachment noting "the issues in NYISO have been high from [a]n operation standpoint," annexed hereto as Exhibit B-30 (XOOM_MIRKIN_044118, XOOM_MIRKIN_044121);
- a document dated January 2018 showing December 2017 numbers for power and gas, annexed hereto as Exhibit B-31 (XOOM_MIRKIN_045315);

- a later document also dated January 2018 showing December 2017 numbers for power and gas, annexed hereto as Exhibit B-32 (XOOM_MIRKIN_045490);
- a document dated June 2018 showing May 2018 numbers for power and gas, annexed hereto as Exhibit B-33 (XOOM_MIRKIN_047278).

26. Sometimes it was the case that actual COGS were lower than anticipated—which also would have been a consideration when setting rates for the upcoming months. Take for example the November 2017 email with attachment annexed hereto as Exhibit B-34 (XOOM_MIRKIN_044505, XOOM_MIRKIN_044506), noting [REDACTED]
[REDACTED]
[REDACTED] noted in another November 2017 email with attachment, annexed hereto as Exhibit B-35 (XOOM_MIRKIN_027880, XOOM_MIRKIN_027882). In that same month, though, [REDACTED]
[REDACTED], as shown in the November 2017 email annexed hereto as Exhibit B-36 (XOOM_MIRKIN_044516).

27. In February 2018, Director of Risk Brent McIntyre forwarded me an email, a copy of which is annexed hereto as Exhibit B-37 (XOOM_MIRKIN_045641), in which he noted a “miss for gas” attributable in part to a “pricing error in NY Market” In response, I asked for more information “to dig into this,” so that I could understand the difference between estimated and actual costs. Any significant misses attributable to pricing errors would have been considered when setting rates for the upcoming months.

28. Around the same time, we learned of unexpectedly high costs from January 2018 attributable to weather that was colder than forecast. As a consequence of those actual costs significantly exceeding our estimates, XOOM did not decrease rates in March 2018 as much as it otherwise would have in order to recover the unexpected cost increases.

29. XOOM's business records contain additional documents reflecting XOOM's actual COGS. Examples of such documents showing instances when XOOM's actual COGS differed from the estimated COGS shown in the rate-setting worksheets include:

- Consolidated Financial Statements for June 2018, dated September 12, 2018, bearing Bates number XOOM_MIRKIN_030413, annexed hereto as Exhibit B-38.
- a document titled "Supply, Product, and Pricing Group – 2014 Challenges and Accomplishments," dated February 5, 2015, bearing Bates number XOOM_MIRKIN_007284, annexed hereto as Exhibit B-39.
- a financial package for January 2013, dated March 14, 2013, bearing Bates number XOOM_MIRKIN_035461, annexed hereto as Exhibit B-40.
- a financial package for February 2013, dated April 10, 2013, bearing Bates number XOOM_MIRKIN_035541, annexed hereto as Exhibit B-41.
- an email concerning February 2013 financials, dated April 5, 2023, bearing Bates number XOOM_MIRKIN_063194, annexed hereto as Exhibit B-42.
- a financial package for March 2013, dated May 10, 2013, bearing Bates number XOOM_MIRKIN_035690, annexed hereto as Exhibit B-43.
- an email concerning the April 2013 financial package, dated June 7, 2013, bearing Bates number XOOM_MIRKIN_009947, annexed hereto as Exhibit B-44.
- a financial package for April 2013, dated June 7, 2013, bearing Bates number XOOM_MIRKIN_009918, annexed hereto as Exhibit B-45.
- A "Gross Margin by Market Summary Analysis" for April 2013, dated June 13, 2013, which was produced in the native Excel form with Bates number XOOM_MIRKIN_005249, annexed hereto as Exhibit B-46.
- Consolidated Financial Statements for May 2013, dated August 6, 2013, bearing Bates number XOOM_MIRKIN_063969, annexed hereto as Exhibit B-47.
- Consolidated Financial Statements for June 2013, dated August 7, 2013, bearing Bates number XOOM_MIRKIN_064019, annexed hereto as Exhibit B-48.
- a flash report for May 2013, dated June 20, 2013, which was produced in the native Excel form with Bates number XOOM_MIRKIN_010072, annexed hereto as Exhibit B-49.

- a Unit Margin by Month sheet from the financial package for April 2013 dated May 30, 2013, bearing Bates number XOOM_MIRKIN_009871, annexed hereto as Exhibit B-50.
- a New York Gas Imbalance document for June 2016 dated July 13, 2016, produced in Excel form with Bates number XOOM_MIRKIN_070005, annexed hereto as Exhibit B-51.
- a New York Gas Imbalance document for July 2016 dated August 23, 2016, produced in Excel form with Bates number XOOM_MIRKIN_009065, annexed hereto as Exhibit B-52.
- a New York Gas Imbalance document for August 2016 dated September 21, 2016, produced in Excel form with Bates number XOOM_MIRKIN_070203, annexed hereto as Exhibit B-53.
- a New York Gas Imbalance document for September 2016 dated October 19, 2016, produced in Excel form with Bates number XOOM_MIRKIN_070297, annexed hereto as Exhibit B-54.
- a New York Gas Imbalance document for November 2016 dated December 20, 2016, produced in Excel form with Bates number XOOM_MIRKIN_070408 (2016 NY Gas Imbalance), annexed hereto as Exhibit B-55.

C. Margins Naturally Vary in Isolation and on Average

30. Margins between fixed and variable rate products typically are very different, not only at XOOM, but throughout the industry. This is because a variable rate carries certain risks for the energy provider that a fixed-rate product does not. The variable-rate customer can cease using XOOM's services with no notice and at no cost to the customer. The fixed-rate customer, on the other hand, is locked in for a set period of time, giving XOOM assurance that the customer will remain a customer until at least a date certain. That assurance provides stability and predictability to the company and allows XOOM to purchase energy supply for its fixed-rate products far in advance—while that is not possible for the variable customers.

31. For these reasons and others, I would not expect XOOM's margins for the various fixed products to match or even correlate with the corresponding margins for variable products, whether considering same-month margins or average margins.

32. XOOM—like other retail energy providers—treats the standard energy and clean energy markets differently, partially because customers who purchase clean energy are willing to pay a premium for it. One of the reasons for this is that the utility company does not offer clean products at all, meaning that clean products are a commodity with limited availability, and when availability is limited, the market permits higher pricing.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 1, 2024.

/s/ Jason Loehde

Jason Loehde